

as full justification according to the pleadings, which says that the allegation contained in the letter is true in substance and in fact. Probably the Attorney-General will reply as he likes.

Mr. Fraser-Smith:—In the answer to my petition the plaintiff, as the said words were true in substance and in fact. I swear, upon my oath, that the statement that I conferred with any Chinese of dubious reputation is false. I was invited to become the adviser to a number of Chinese in regard to certain matters in reference to the proposed establishment of a Salt Farm in the Colony. I held the same position in relation to it as Mr. Denny did to the head of the syndicate.

The Chief Justice:—Is it necessary to go into all this? Are you going to cross-examine on it, Mr. Attorney?

The Acting Attorney-General:—Some of it. The Chief Justice:—You had better leave it till then.

Mr. Fraser-Smith acquiesced. He continued:—I deny that I was, in any sense, a confederate of a Chinese syndicate that was formed, or rather that was found not to be legally formed, to establish a Salt Farm in this Colony in 1887.

The Chief Justice:—Is it within your knowledge that the Chinese were of dubious character?

Mr. Fraser-Smith:—They were not a number of them were bankers, and others were reputable merchants in Hongkong. "Doubtful" is a word that I never used. The leading man was a banker, the others were merchants of high repute in the colony.

The Chief Justice:—You say that with regard to all of them?

Mr. Fraser-Smith:—Yes, with regard to all of them. They were Chinese gentlemen—as we understand the term Chinese gentlemen in this colony.

The Chief Justice:—There was a dispute, was not that?—Yes.

And that led to an action, and you gave evidence?

Mr. Fraser-Smith:—Yes, I was subpoenaed to give evidence by one of the defendants.

By the Attorney-General:—I see this copy of the *Telegraph* of the 11th September, 1888, containing a report of my evidence. The report says Mr. Fraser-Smith being a sort of general manager, and to set a commission of 20 per cent. on the net profits. That is perfectly true. It was certainly not arranged between myself and three or four people I met by invitation, I was at a dinner-party and was asked to act as adviser. I certainly advised them to buy up as much of the salt in the colony as they could. In my position as adviser I had to see that they kept within the law.

The Attorney-General:—And you were to have a share in the profits?

Mr. Fraser-Smith:—Certainly you would not have me work for nothing.

The Attorney:—That is not the way, lawyers are usually paid. You were acting as legal adviser.

Mr. Fraser-Smith:—Not quite that. I certainly expected to be paid, or I should not have done anything. As the profits were a doubtful quantity, the syndicate were not sure of their profits, they asked me if, instead of a fixed salary, I would take a share of the profits. It was suggested to me that I should acquire the Customs people here, the Chinese had an idea that the officer commanding the revenue station here could be induced by being bribed, to send out gunboats to prevent so-called smugglers from bringing salt. I told them they were foolish for having that idea, and refused to have anything to do with anything of the sort.

The Attorney-General:—In your cross-examination there is this passage:—"What I did at Canton was to purchase two old dished gunboats for \$10,000; one was to be fixed up as a salt cruiser, with flag, guns, and crew, provided by the Chinese authorities, and sent for by us. I was promised 20 per cent. on the amount of purchase money and a percentage on the profits."

Mr. Fraser-Smith:—Quite correct.

The Attorney-General:—Now will you look at the issue of the 12th September 1888. You say in a paragraph:—"For unparalleled credulity, or impudent audacity—it does not matter very much which is the real quality—the so-called intelligent Chinese beats creation. No better example of this could be cited than a statement made in the *Sun* of the 12th day by a Chinese gentleman named Lai Kit, the defendant in the 'Corner' case. Mr. Lai Kit is a Chinese banker, and no doubt, from his position, a leading and influential member of the Chinese community. He has been in Hongkong for twenty years, and the whole of that time engaged in the banking business. And yet, notwithstanding what must have been an extensive experience of foreigners in this colony, Mr. Lai Kit naively stated in the witness box that he had been informed by his friends (and implied that he had believed) that one of his associates in the projected Salt Farm—Mr. Fraser-Smith—was a person invested with such authority and of such great influence that he could calmly go up to Peking and hobnob with the Emperor without ceremony, had a free and special *entree* to the *yamen* of His Excellency the Viceroy of Canton as if it were a public hotel, was paid \$1,000 per annum by the Governor of Hongkong for letting that official down easily in his paper, could induce the British Consul at Canton to do anything he liked for a consideration, had been offered but had refused the Registrar Generalship of this colony and that the Government had been petitioned under his order was a full-fledged barrier who did not practise law because he could 'squeeze' far more money out of his newspaper, and a lot more hair-raising atrocities which our reporter has not set out at length. Mr. Lai Kit, banker in Hongkong for over twenty years, must either be an arrant rogue or a consummate fool. We have no hesitation in saying that, in our opinion, he is both." (Laughter.) That is an article which you published?

Mr. Fraser-Smith:—Which I wrote.

The Attorney-General:—Then in your opinion he is both?

Mr. Fraser-Smith:—Yes. I do not know who suggested that the Commissioner of Customs should be squeezed; it came through the interpreter. It was a reasonable idea for a Chinaman to have. I see that the report of the case on the 12th September was headed "The Salt Corner," so that in delivery judgment Chief Justice Russell said that I was in the same position as the other members of the firm, but I do not quite see the application of it. I do not doubt the correctness of the report—it was published in my paper, and I am responsible for it. I never at any time, agreed to be a partner in the syndicate.

The Chief Justice:—A partner in the profits but not in the expenses?

Mr. Fraser-Smith:—I agreed to take a portion of the profits for certain services rendered. (By the Attorney-General) I wrote this paragraph published on the 15th September:—"Until the Chief Justice's case judgment in the late Salt 'corner' case, judicial etiquette forbids our commenting in any way on the evidence that might tend to prejudice any of the points at issue. But in justice to Her Majesty's Consul at Canton, whose name was imported into the case by one of the witnesses, we feel bound to state that the whole of the references made to that official by Lai Kit were absolutely and utterly devoid of the slightest foundation. In due course the true story of this cleverly arranged but foolish 'squeezing' will appear in our columns."

The judgment was delivered on the 1st November. The interpreter of the Chinese

doubtless suggested bribing the Commissioner of Customs because he thought it was perfectly legitimate, as it is in China. I did not dub Lai Kit an arrant rogue and consummate fool.

The Attorney-General:—Well, don't you think that a very strong inference to draw, when you yourself stand in with those persons, and speak of them—as one wanting to bribe the Commissioner of Customs, and one as a consummate fool—would not one be justified in drawing the conclusion that they were characters that were dubious?

Mr. Fraser-Smith:—Certainly not. They were acting entirely in accordance with Chinese custom, as anyone knows who knows the Chinese. Their idea of morality is not exactly the same as ours.

The Chief Justice:—Are you attempting to show that every Chinaman is of dubious repute?

Mr. Fraser-Smith:—No, I am not.

The Attorney-General:—You write in a rather free strain on various things?

Mr. Fraser-Smith:—What do you mean?

I mean what I say—but I will put it another way. You have no hesitation in calling a spade a spade?—Most decidedly not.

And you sometimes go a little beyond that? You think so?

You have on several occasions used very strong expressions towards the defendant in this case in your paper?—If you prove it I will tell you. Bring something before me to show, or you recollect calling the *China Mail* a *Fraser-Smith's Property* (laughter).—Certainly.

What did you mean by that?—That it is very much more used to wrap fish than as a newspaper to read.

That it is absolutely worthless?—I do not say that. I say it is very much more used for wrapping up fish than for instructing the public. Did you not in one issue say that it had only one reader?—Not at all—I only quoted from an editorial, in which the writer referred to "our reader."

The Chief Justice:—It must be a personal attack to justify it. There may have been any amount of abuse on the other side—I do not say there has—but you cannot take any notice of it.

The Attorney-General:—I think I am entitled to show the sort of man who comes into Court and claims \$10,000 damages.

The Chief Justice:—Yes, on the question of damages.

The Attorney-General:—I will ask just one more question. Have you at any time putting aside this present alleged libel—been attacked in the *China Mail*?

Mr. Fraser-Smith:—Yes, a great many times.

Will you give me one specific occasion?—I will in due course.

I want it now—I cannot give it just now.

Will you give one instance?—Y. Y. I will read you one. On the 10th September in the leading article. Here is the paper.

The Attorney-General looked at the paper handed to him, and after perusing the leader returned it, saying:—I really don't see it—something very hidden, I suppose.

Mr. Fraser-Smith:—Oh, I beg your pardon. It is the wrong paper. And again on the 12th July, I am attacked, the writer hinting at people who should be the last to throw stones. It is in an article on *Patt's Ruston*, and it finishes up with "And while we cannot sympathise with a good deal of the indignation at their conduct manufactured by people who should be the last to throw stones." It is a direct reference to the *Hongkong Telegraph* and myself.

You think so?—I am sure of it, and the public are sure of it.

Very well, let us have another occasion on which you say you were attacked. I think you have got enough.

So there were no other occasions on which you say they libelled you?—Oh, plenty.

Mild remarks of that description?—Yes, I will give the *China Mail* credit for one thing—they seldom wrote very scathingly.

The Chief Justice:—I cannot decide this case on the balance of epithets used. Nothing unconnected with this libel can be used by either of the parties.

The Attorney-General:—I wish to show that Mr. Fraser-Smith has persistently attacked Mr. Murray-Bain, and now he comes here and asks damages in the sum of \$10,000.

The Chief Justice:—It does not matter what he claims.

The Attorney-General:—Of course not.

The Chief Justice:—Supposing you had never said anything at all against him, that does not justify you in libelling him.

The Attorney-General:—Mr. Fraser-Smith, you have been in this Court on several occasions before?—Yes.

As defendant?—Yes.

And you have been once convicted?—Yes, on a criminal libel, and four times acquitted.

The Chief Justice:—For criminal libel, I think you said.

Mr. Fraser-Smith:—Yes. I was once convicted of a libel on a man named Bandmann, but I had the satisfaction of since learning that Sir George Philipps afterwards admitted that it was a gross miscarriage of justice.

The Chief Justice:—Do you wish to say anything more?

Mr. Fraser-Smith:—No, that is my case, my Lord.

The Attorney-General then rose to open the case for the defence. He said:—From what your Lordship has gathered from the pleadings you will see that this is a trivial case. In the first place, I submit that the words that the *Indo-China* are not justifiable, and that Mr. Fraser-Smith has not rightly or fairly drawn from the words used the inferences on which he bases his case. The second line of defence is that this is a plea of justification. And the third defence is what is known as qualified privilege—that it is a fair and bona fide comment upon this man, when he, whether in his capacity as a journalist or not, comes forward, as he himself says, as a champion of morality.

The rest of the proceedings are unavoidably as long as the issues that have been raised, and the gist of the judgment may be given. The intervening portion will appear in full to-morrow.

JUDGMENT.

The Chief Justice, at the close of the plaintiff's reply, said:—I must say it is a matter of some surprise to me in this case that in a dispute between the editors of two newspapers circulating in this colony neither party should have wished to extract his interests to the decision of a jury, and I am rather afraid that the way I shall find it my duty to deal with this case reference to such subjects as "Jack the Ripper" and the Venetian stiletto are not often left to the decision of a Judge, and the decision, under these circumstances, must necessarily be stripped of the romantic character which sometimes attaches to the verdict of a jury. I propose to deal, as soberly as I can, with the issues that have been raised, and in some respects in assuming the functions of a jury as well as a Judge, it will perhaps be as well to very shortly consider the circumstances under which the alleged libel was published, before we consider the intentions. The matter arose out of a meeting of the shareholders of the *Hongkong Rope Manufacturing Company*. The plaintiff, Mr. Fraser-Smith, appeared at that meeting, and as a shareholder, addressed the

Chairman and Court of directors. His remarks as a shareholder were not resting to the people concerned in the affairs of the Company, but when Mr. Fraser-Smith says he was there in the character of a shareholder I think he has been report which is admitted to be a shareholder, but he says—"It is in no spirit of opposition to anyone that I ask these questions."

That is a question showing a reference to the shares—and he goes on to say:—"I am a very small shareholder, but as I am in most Companies in Hongkong, but as the representative of public interests I should like to know if these reports are true?" So that as far as it may be material in this case I think he did, at that meeting, pose as the representative of public interests as well as a shareholder. And as the representative of public interests it was perhaps, only that those words, in their assumed character, should be commented upon. I must say that plaintiff, in my view of the case, is a subject for a far more severe and a more pointed person, as a public man, and as has been pointed out by Mr. Fraser-Smith, and very properly pointed out, the right to comment upon the acts and words of a public man is not confined to newspapers, but may be exercised by any private individual. It would seem, therefore, that the defendant would have a right to make fair comments and criticisms in his newspaper, or whatever was said or done by the plaintiff at the meeting as a representative of public interests. It does not matter whether the criticism took the form of a letter from an anonymous correspondent or a leader by the editor. It has also been pointed out, and very clearly, that that right is limited to fair and candid criticism, although latitude of language is allowed in the course of comments upon the acts of public men, but that latitude of language must not extend to a personal attack upon the character of the person posing as a public man. When it comes to be a personal attack altogether different considerations step in, and there is no privilege known at all. The only justification such attack can have is that it is true. Therefore in considering the letter which has been complained of in this case, must consider first of all whether it is limited to a criticism on the position which the plaintiff in this case has chosen to assume as the representative of public interests. If I think it goes beyond that and assumes the form of a public attack I must see if it is strictly justified. It is a clear matter of law that where a person characterised as a public man is held responsible. Now if I were leaving the case to a jury, I should ask them to read through the letter, take it in connection with the position Mr. Fraser-Smith assumed at the public meeting, and say whether they considered it libellous or not, or whether, looking at the circumstances, they considered it justified. With that view I have read the letter through myself and I propose to mention those parts which appear to me to deal with the case.

His lordship then went into the case at considerable length. We shall give his remarks at length in our next issue. In the end he said:—"I do not think there has been sufficient justification shown. Now in coming to the question of damages, there has been no damage proved or suggested. I can hardly believe that any actual damage exists. This is one of those cases in which it has generally been the custom—supposing the plaintiff's case is proved, to find damages for a small amount, and justify generally only give such an amount as is fairly necessitated. If one man is unjustly accused of conduct which is not, to say the least, of a favorable character, he is entitled to come into court and show that he has not been guilty of the conduct imputed to him, or call upon the other side and insist upon their showing that he has. If they fail, the necessary result is that he is found guilty, and the verdict itself carries satisfaction, without any large pecuniary addition. Therefore in this case I shall consider the plaintiff's necessities are amply satisfied by a verdict for the very small amount of \$25."

Mr. Fraser-Smith:—And costs?

The Chief Justice:—Yes, with costs.

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Mr. Kewick. In accordance with the Articles of Association all these gentlemen retire, but being eligible, offer themselves for re-election.

AUDITORS.

The present accounts have been audited by Messrs. J. H. Cox and R. Lyall, who retire, but offer themselves for re-election.

DOUGLAS LAURIE & Co., General Managers.

Sixth Year 1888-1889.

BALANCE SHEET FOR THE YEAR ENDED 30TH JUNE, 1889.

Assets.

To value of Co's Steamers—

Italian, Haiphong, Hainan, Nansha, Thales, Formosa, and Fokien.....\$1,083,100.00

Value of Wharves.....20,000.00

Value of Buoy and Moorings at Swatow, Amoy, Tamsui and Hongkong, and of the Steam Launch.....13,391.34

The Hongkong and Shanghai Banking Corporation.....13,421.91

The H. & S. Banking Corporation Deposit.....100,000.00

Cash Account.....9,124.49

Balance of Claim on Oriental Bank Corporation in Liquidation.....3,756.73

Freights due 30th June.....85,853.98

Sundry Acc'ts. Receivable.....25,354.35

Value of Coals in Godowns.....14,015.25

Value of a Captain and 1 Shaft in hand.....1,280.44

\$1,369,326.49

Liabilities.

By Proposed Capital:—

20,000 Shares at \$50.00.....\$1,000,000.00

1,144 Shares unallotted.....57,200.00

18,856 Shares.....\$ 942,800.00

Underwriting Account of the Co. and Reserve Fund 30th June, 1887.....148,431.39

Amount written off Profit and Loss Account on 30th June, 1888.....62,628.80

Less withdrawn to meet Permanent Repairs to the *Fokien* under No. 2 Lloyds Survey.....2,479.46

Sundry Accounts Payable.....37,939.94

Suspense Account, Oriental Bank Corporation.....11,222.43

Profit and Loss Account, Balance 30th June, 1888 brought forward.....3,110.37

Balance 30th June, 1889.....145,968.61

\$1,369,326.49

PROFIT AND LOSS ACCOUNT, 30TH JUNE, 1889.

To Charges Account.....\$ 3,553.31

Remuneration to Consulting Committee for 12 months to date.....2,000.00

Auditor Fees.....500.00

Remuneration to General Managers for Office Expenses, &c., for 12 months.....10,000.00

Balance.....149,618.68

\$165,672.29

By Balance of Profit and Loss 30th June, 1888.....\$ 3,110.37

Profit on running the Co's Steamers to date.....149,136.30

Profit on Coals supplied to Steamers.....5,109.80

Profit on Wharfage.....3,985.23

Profit on Hongkong Moorings, &c., at noon.....1,912.02

Profit on Exchange Account.....1,020.00

Bonus on Contributions from Canton Insurance Office and Hongkong and Whampoa Dock Company, Limited.....28.98

Interest Account.....1,358.59

\$ 165,672.29

We have compared the above Statement with the Books and Vouchers of the Company, and have found the same in accordance therewith.

JAMES H. COX & R. LYALL, Auditors.

Hongkong, 13th September, 1889.

MINING IN THE MALAY PENINSULA.

Mr. W. V. Drummond writes on the above subject to the *Shanghai Morning News*—The collapse of the Rawang Mine in Selangor affords an opportunity of mentioning a fact which is apparently only known to a very few of the investors in the mining ventures in the Malay Peninsula, who reside in China. It is the fact that the experience gained has shown that what is true in other parts of the world is equally true in regard to the Malay Peninsula, viz. that alluvial mining will pay Chinese, but will not pay Europeans, and that the only kinds of mining that will pay Europeans there, as elsewhere, are either in lodes, or gold-bearing quartz reefs, at least so far as these two metals are concerned.

When mining engineers first went to the Straits to prospect, a few years ago, they were all aware of this fact as an understood axiom of mining, but they one and all, for these reasons, Australia, as well as those from Cornwall and elsewhere, were so astonished at the apparent richness of the alluvial deposits which they saw being worked by the Chinese in Perak and Selangor, that they thought these were entirely exceptional and would pay European Companies. They knew that wherever there are large alluvial deposits of mineral, that there

